

SENATE BILL 1190

By Norris

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 1, Part 4 and Title 56, Chapter 13, relative
to insurance companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-13-114, is amended by adding
the following language as new, appropriately designated subsections:

(j)

(1) Any captive insurance company failing to provide premium tax returns and make payments of taxes promptly and correctly as provided by this chapter shall forfeit and pay to the state, in addition to the amount of the taxes, the greater of five hundred dollars (\$500) or an amount equal to five percent (5%) for the first month or fractional part of the first month of delinquency. If the period of delinquency exceeds one (1) month, the company shall pay an additional penalty of five percent (5%) for the second month or fractional part of the second month. If the period of delinquency exceeds two (2) months, for the third and each subsequent month of delinquency, the company shall pay a penalty of one half of one percent (0.5%) of the amount of tax due. The maximum penalty assessed under this subdivision (j)(1) must not exceed one thousand dollars (\$1,000) for any company that is not more than three (3) days delinquent. All delinquencies must bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The penalty and interest applies to any amount of the tax that remains unpaid on the due date, and no penalty or interest may be waived.

(2) The commissioner has the discretion, for good cause shown, upon application made in advance of the delinquency date, to grant an extension of time, not to exceed sixty (60) days, to a captive insurance company to file the premium tax returns and pay the taxes imposed under this chapter, without penalty; provided, that any amount of delinquent taxes bears interest as provided in subdivision (j)(1) from the date the amount became due.

(3) Any captive insurance company that fails to pay any taxes due, plus penalties and interest, for sixty (60) days beyond the due date may thereafter be debarred from transacting any business of insurance in the state until such taxes, penalties, and interest are fully paid.

(k) The premium tax payment and any penalties and interest must be received in a manner established by rules promulgated by the commissioner. The rules may provide for the electronic filing of premium tax returns and electronic payments, and for a convenience fee in an amount not to exceed the costs of accepting electronic premium tax returns and electronic payments, in addition to any applicable penalties and interest. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 56-13-118, is amended by deleting the section in its entirety.

SECTION 3. Tennessee Code Annotated, Title 56, Chapter 13, Part 1, is amended by adding the following language as a new, appropriately designated section:

(a) As used in this section, “dormant captive insurance company” means any pure captive insurance company or protected cell captive insurance company that has:

(1) At no time insured a controlled, unaffiliated business;

(2) Ceased transacting the business of insurance, including the issuance of insurance policies; and

(3) No remaining liabilities associated with insurance business transactions, or insurance policies issued prior to the filing of its application for a letter of dormancy under this section.

(b) A pure captive insurance company or protected cell captive insurance company domiciled in this state that meets the criteria of subsection (a) may apply to the commissioner for the issuance of a letter of dormancy. A letter of dormancy issued by the commissioner must specify an expiration date that is not later than five (5) years from the date of its issuance. The commissioner may, before the expiration date, issue a superseding letter of dormancy. A superseding letter of dormancy must specify a new expiration date that is not later than five (5) years from the date of its issuance.

(c) A dormant captive insurance company that has been issued a letter of dormancy shall:

(1) Thereafter possess and maintain capital and surplus as required by § 56-13-105;

(2) Prior to March 15 of each year, submit to the commissioner a report of its financial condition in accordance with § 56-13-108; and

(3) Pay the annual statement fee established under § 56-4-101(a)(4).

(d) A dormant captive insurance company that has been issued a letter of dormancy is not subject to or liable for the payment of the annual aggregate tax established under § 56-13-114(c). A dormant captive insurance company is liable for payment of the premium tax on premiums received before the issuance of a letter of dormancy.

(e) A dormant captive insurance company that has been issued a letter of dormancy shall apply to the commissioner and receive a rescission of the letter of

dormancy prior to issuing any insurance policies and resuming the business of insurance.

(f) The commissioner shall rescind a letter of dormancy issued to any captive insurance company if that company no longer meets the criteria of subsection (a). The rescission is effective as of the date the company no longer meets the criteria of subsection (a).

(g) In the commissioner's sole discretion, an examination required by § 56-13-109 may be held in abeyance during the time the dormant captive insurance company is under a letter of dormancy.

(h) An application for a letter of dormancy and an application for the rescission of a letter of dormancy constitute a change of business plan for the purposes of § 56-4-101(a)(8).

(i) The captive insurance company is responsible for all taxes and fees, and for compliance with this title, for the year in which the rescission or expiration of its letter of dormancy occurs.

(j) The commissioner may promulgate rules as necessary to carry out this section. All rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. Tennessee Code Annotated, Section 56-13-114(c), is amended by adding the following language as a new subdivision (3):

(3) A dormant captive insurance company that has been issued a letter of dormancy under Section 3 of this act is not subject to or liable for the payment of the annual aggregate tax established under this subdivision (3).

SECTION 5. Tennessee Code Annotated, Title 56, Chapter 13, Part 2, is amended by adding the following language as a new, appropriately designated section:

(a)

(1) Upon the application of a protected cell captive insurance company, one (1) of its protected cells may be converted to a pure captive insurance company with the consent of the commissioner. Upon compliance with part 1 of this chapter, the commissioner may issue to the converting protected cell a certificate of authority with an effective date of its original date of formation as a protected cell.

(2) If the converting protected cell is a series of a limited liability company, the cell must file organizational documents with the secretary of state that comply with part 1 of this chapter and titles 48 and 61, as applicable. The organizational documents must include the name of the predecessor series of a limited liability company and the date of formation as a series. Upon conversion, the formation date of the series is the formation date of the new entity. The new entity shall possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor series.

(3) If the converting protected cell is any other type of incorporated protected cell entity, the converting protected cell must submit amended organizational documents to the secretary of state that comply with part 1 of this chapter and titles 48 and 61, as applicable.

(4) If the converting protected cell is not a series of a limited liability company or an incorporated protected cell, the cell must file organizational documents with the secretary of state that comply with part 1 of this chapter, titles 48 and 61, as applicable, and any other applicable provision of law governing formation of that type of entity. The organizational documents must include the name of the predecessor captive insurance company and the date of

formation as a cell. Upon conversion, the formation date of the cell is the formation date of the new entity. The new entity shall possess all assets and liabilities, including outstanding insurance liabilities, owned by the predecessor cell.

(b) A pure captive insurance company may apply to the commissioner for conversion to become a protected cell captive insurance company under any form permitted under this part. Upon compliance with this part, approval by the commissioner, and the filing of amended organizational documents with the secretary of state, the captive insurance company must be issued a revised certificate of authority. The effective date of the revised certificate of authority must remain the same as the effective date of the formation of the prior pure captive insurance company.

(c) With the consent of both the affected protected cell captive insurance companies and the commissioner, an individual incorporated cell or series cell of a captive insurance company may disaffiliate from a protected cell captive insurance company and affiliate with another protected cell captive insurance company. The commissioner may require the affected protected cell captive insurance companies and the individual incorporated cell to make necessary changes to their business plans, organizational documents, participation agreements, or other governing documents prior to approving the disaffiliation. The formation date of a series cell that affiliates with another protected cell captive insurance company is the date of its original formation with the prior protected cell captive insurance company. An incorporated or series cell shall maintain and carry over all assets and liabilities, including outstanding insurance liabilities, to the new protected cell captive insurance company.

(d) For the purposes of §§ 56-13-108, 56-13-109, and 56-13-114, the date of final conversion or disaffiliation of a protected cell is the date of termination of that cell

from the prior entity. The prior entity is responsible for the accounting, oversight, and premium tax on any transactions prior to the date of final conversion or disaffiliation.

The successor entity is responsible for the accounting, oversight, and premium tax on any transactions on or after the date of final conversion or disaffiliation.

SECTION 6. Tennessee Code Annotated, Section 56-1-413, is amended by deleting subsection (b) in its entirety and substituting instead the following language:

(b) All persons engaging, assisting, or making the required examination under this chapter must be regular state employees, and their entire expenses and compensation must be paid only by the state as now provided for by law.

Notwithstanding this subsection (b), the commissioner may contract, in accordance with applicable state contracting procedures, for qualified actuaries and financial examiners the commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided, that, with respect to financial examinations, the compensation and per diem allowances paid to the persons must be fixed by the commissioner at a reasonable amount commensurate with usual compensation for like services.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.